

March 12, 2003

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**TO:** Local Agency Formation Commission

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**FROM:** Ken Lee, Project Manager

**RANDAL J. BRESSETTE**  
COUNCILMAN  
CITY OF LAGUNA HILLS

**SUBJECT:** Supplemental to Legislative Report

**PETER HERZOG**  
COUNCILMAN  
CITY OF LAKE FOREST

Please review the attached summary of AB 838 (Spitzer) submitted by the City of Rancho Santa Margarita, the bill's sponsor, making clarifications to the staff report about the bill's provisions and impacts. Staff will orally reiterate these clarifying points during the legislative report.

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GENERAL PUBLIC

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**INCORPORATIONS/COMMERCIAL AND  
INDUSTRIAL DEVELOPMENT STANDARDS**

**AB 838 (Spitzer)**

Orange County Assemblyman and former County Supervisor, Todd Spitzer has introduced a bill, **AB 838 (Spitzer)**, to address a local issue in the City of Rancho Santa Margarita ("RSM") related to certain restrictions and covenants on real property pre-dating incorporation which operate to control land use and which regulate development standards for commercial and industrial property. According to RSM representatives, these restrictions which are imposed against most business owners in the entire community are the result of a Master Business Association composed of a five (5) member board which was originally established by the Master Developer to be a maintenance association.

In practice, this business association has evolved from a maintenance association to a zoning regulatory body whose regulations cause conflicts with the city general plan policies and zoning regulations which are derived from the constitutional police powers given to cities. These conflicts also require business owners to comply with a duplicative permit process for the same entitlement: (1) through the business association and (2) through the city.

To illustrate: (1) the city adopts by reference the sign program developed by the business association for a retail center. This sign program becomes part of the city's sign regulations. The sign program is changed by the business association; however, it is not submitted to the city for approval as an amendment to the originally adopted sign program. A business owner undergoes the application process for approval by the business association, unaware that the sign program has been changed and not approved by the city. After complying with both the business association and city permit process, the business owner discovers that his/her proposed sign is inconsistent with the sign program adopted in law by the city; (2) a business owner contacts the city regarding purchasing property and locating a business in the community. City representatives advise the business owner that the proposed use is consistent with the city's general plan and zoning. The business owner discovers that a deed restriction on the real property prohibits such a use and requires the business owner to submit a request for a variance from the business association for consideration on whether the proposed use will be permitted.

AB 838 would not be applicable to the traditional Homeowners Association ("HOA") for residential property. AB 838 does not operate to abolish a business association or do away with its covenants, conditions and restrictions ("CC&Rs"). AB 838 provides that only those restrictions are superseded to the extent they are in conflict with a new city's general plan policies and local zoning requirements. Although AB 838 was introduced to address local issues in RSM, it applies to all cities that incorporated on or after January 1, 1999. The bill may, therefore, impact a number of other new cities in the state, including, but not limited to, the cities of Laguna Woods, Aliso Viejo, Oakley, Elk Grove and Rancho Cordova. Staff is recommending that the Commission "watch" the bill.